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Supreme Court, U.S.
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No. 09-5

In The

Supreme Court of the United States

Andrew J Bullock IV,

Pro Se Petitioner,

v.

Arthur S. Klein, Esq., et al.,

Respondents,

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Andrew J. Bullock IV,
Petitioner, Pro Se
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QUESTIONS PRESENTED:

Petitioner Andrew Bullock's Township implemented a Building Code, the Administration section (BOCA 1993, Section 107.3) of which clearly required a signed affidavit indicating permission of the 'owner in fee' to apply for a Building Permit. Petitioner owned a fee simple home in a Planned Community – not a condominium - subject to a Declaration containing contradictory language. The Association sent semi-annual Newsletters, frequently reminding owners to keep up their properties.

The questions presented are:

1) Respondent Township issued a building permit - at the knowing direction of Respondent Gleason - to Respondent homeowners' association, after Petitioner – the owner in fee - directed it to not issue a building permit. Was this correct?
2) The covenant relied on by the Court of Appeals has a conditional statement, " . . . to preserve the beauty, quality and value of the neighborhood, . . . ". In Pennsylvania, restrictive covenants are not favored, and are construed strictly. Petitioner's serviceable roof was replaced with a different color by the association. Did this exceed the provision, thereby infringing on Petitioner's right to exclude?

LIST OF PARTIES

Petitioner:

Andrew J Bullock IV, Pro Se

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Respondents:

Arthur S. Klein; Kenneth O. Spang, III; Scott F. Waterman; Marie R. Gleason; Thomas J. Crandall; Gerard J. Berger; Shayna F. Best; William M. Sunick, Jr.; Judith B. Wetzel; Donna M. Houghton; Ronald A. White; Christopher Conn; Elizabeth A. Shingle; Sergeant Barrar; Officer John Doe #s: 1 through 6; Captain Andrew Chambers; Hugh A. O'Hare; Thomas J. Foga, Jr.; Tredyffrin Township; Tredyffrin Township Police Department; Main Street Village Homeowners' Association; PENCO Management, Inc.; Edmund S. Pendleton; Donald Franceschini; Monika Germono; Bryn Mawr Landscaping Co., Inc.; Atlantic Roofing Corp.; Jim Miller Roofing and Sheet Metal, Inc.; James Miller; Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP; Black, Stranick & Waterman, LLP; David J. Scaggs; Blair H. Granger; Blair H. Granger & Associates, P.C.; Emeline Baldassarre; Judy L. Difillipo; Warren E. Kampf; Bill DeHaven; Paul J. Drucker; Robert W. Lamina;

Vincent Pompo; Mark Difeliciantonio; E. Brooks Keffer, Jr.; Thomas P. Hogan; Sovereign Bank; Baci Brothers Builders, Inc.; Arjet Baci; Syrja Baci; Ilir Baci; Patricia E. Evans; Kathryn Marinick.

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OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is listed by that court as Not Precedential. That court's case number is 08-4646.

The opinion of the United States District Court appears at Appendix B to the petition. The EDPA case number is 2:07-CV-0621.

The trial court's ruling is 2:07-CV_0621. The Third Circuit's Case No. 08-4646 ruling is Per Curiam affirming Respondents' 12b6 Motion(s) to Dismiss.

Statement of Jurisdiction

The date on which the United States Court of Appeals decided my case was July 31, 2009. No timely petition for rehearing was filed in this case. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

Constitutional and Statutory Provisions Involved

Amendment V

No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. ... nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State..., subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Andrew Jackson Bullock IV respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit.

STATEMENT OF THE CASE

Petitioner Bullock is proceeding Pro Se.

Respondent Township issued a building permit for Petitioner's fee simple home – over my objection. In doing so, Township Respondents violated their own township ordinance [which required permission of the owner], in that they accepted a building permit request from persons without standing, and issued a building permit over the objection of the owner.

Petitioner contends his property rights were infringed by that state action, that those property rights were protected by the 5th and 14th Amendments, and that actions of the Association Respondents were therefore 'under color of law'.

Association - through the Roofing Respondents - trespassed on Petitioner's property, and ripped off the roof of his home, permanently trespassing by replacing it with a roof of a different color.

Township Respondents contend that a building permit review board meeting - held 23 days after Petitioner's roof was removed - was sufficient Due Process consideration.

The right to exclude is a fundamental property right. That right, under due process, should be recognized to extend to control of building permits for fee simple property, including fee simple property in Common Interest Communities. A covenant or an easement may give certain rights to its holder – according to the particular community's governing

documents - but they are not superior to the record owners' rights.

Under the fundamental principles of internal document construction, contracts, particularly adhesion-type contracts like PUD Declarations, are construed strictly against the drafter.

Restrictive covenants are not favored, and are construed strictly in favor of the owner.

Easements are construed broadly to give effect to the intention of the parties, but only after the contract has been construed to determine there is a valid easement.

The Community Associations Institute [CAI], Industry data estimates in 2008 there were:

Communities	Housing Units	Residents
300,800	24.1 million	59.5 million

This is a national scale issue.

Petitioner's property is fee simple property.

The decision to issue the permit was made by the township manager, Respondent Gleason.

The decision directly violated the township's own procedures, implemented by ordinance, which implemented the – at the time – 1993 BOCA building code. That code's Administration section generally requires permission by the owner in fee.

In this case, persons obtained control of a homeowners' association – through an ongoing pattern of fraud – and applied for a building permit

for Petitioner's fee simple home, and were able to obtain that permit from Respondent Township over the objection of Petitioner. It was issued by Township, at the direction of the Township manager, Respondent Gleason, as noted in the text of the 3rd Amended Complaint.

Petitioner's original case was dismissed on a 12 b6 motion by numerous defendants. Respondent Main Street Village Homeowners' Association, in pursuing its state court litigation, never provided discovery even though repeatedly asked for access to records.

> "Fraud vitiates everything into which it enters. It is like the deadly and noxious simoom of arid and desert climes. It prostrates all before its contaminating touch, and leaves death only and destruction in its train. No act, however solemn, no agreement, however sacred, can resist its all-destroying power. All acts into which fraud enters are nullities." Mr. L Madison Day, The Commercial Bank of Manchester v. Buckner, S.C. 20 How. 108, at 109,110 (1858).

For a Pro Se litigant, dismissal on a 12b6 motion because – among other things – the opposing party refused access to records makes composing petitions practically impossible. In ERICKSON v.

PARDUS ET AL., 127 S.Ct. 2197 (2007) this honorable court said,

> "The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A document filed pro se is "to be liberally construed," Estelle, 429 U. S., at 106, and "a pro se complaint,however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers," ibid. (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be so construed as to do substantial justice").

Petitioner contends that vague and contradictory covenants should be construed strictly, in favor of the owner in a planned community. Easements for access should also be construed strictly; however, when found, should be enforced broadly to give them effect.

The Court of Appeals below contends:

> "Here, the Village's "Declaration of Covenants and Easements" explicitly allows the Association to replace Bullock's roof. (Supplemental Appendix 83.) Therefore, because Bullock covenanted away his property right to replace the roof on his home to the Association, his Fifth Amendment claim must fail."
>
> [p. 9, Appendix B]

The Commonwealth Court opined in Mayflower Square Condominium Association v. KMALM, Inc., 724 A.2d 389, 394 (Pa. Cmwlth. 1999).,

> "The fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties. The intention of the parties must be ascertained from the document itself, if its terms are clear and unambiguous. A contract is ambiguous if it is reasonably susceptible of different interpretations and capable of being understood in more than one sense. A determination of whether a contract is ambiguous is a question of law.

"As a contract, the Declaration's terms may be litigated in the same manner as any contract.", ***London Towne Homeowners Ass'n v. Karr***, 866 A.2d 447(Pa. Cmwlth. 2005)

In re Thompson, 896 A2d 659, at 666, footnote 3, "Only a landowner has standing to apply for relief in zoning matters. Section 107 of the Pennsylvania Municipalities Planning Code (MPC), Act of July 31, 1968, P.L. 805, *as amended,* 53 P.S. Section 10107;

"Where a zoning ordinance term is open to differing interpretations in its application to particular facts, we have held that the ambiguous term is to be construed in favor of the homeowner. *Kleinman v. Lower Merion Township ZHB*, 916 A.2d

725 (Pa.Cmwlth. 2006)", Heritage Building Group, Inc. V. Plumstead Twp. Board of Supervisors, PACommw. No. 1387 C.D. 2007, Opinion not Reported.

The FCC and the USCA for the DC Circuit discuss this issue in:

In FCC 07-98, In the Matter of Philip Wojcikiewicz, Application for Review, CSR-6030-0, the commission states [edited sections]:

'However, the lease, condominium declaration, deed or other controlling document is dispositive in individual situations. The Bureau decision found that Petitioner had the requisite property interest based upon the Petitioner's warranty deed and the Declaration for Woodmere Townhomes which indicate that Petitioner owns the lot and home in fee simple ownership.'

'We conclude it is explicit in the warranty deed (the controlling document) that Petitioner owns his townhome and there is no dispute to his ownership. Moreover, we have found previously that "the fact that the Association has responsibility for the repairs, replacements and maintenance . . . where the antenna would be mounted is not controlling.' [do not defeat owners' rights].

"The express language in the Woodmere Townhome Declaration gives Petitioner an ownership interest in his townhome, including the roof, and

nothing offered by the Applicants contradicts this language."

In Building Owners and Managers Association International, et al., v. FCC and United States of America, Satellite Broadcasting and Communications Association, et al., Intervenors, 99-1009, consolidated with 99-1021, (2001), USCA for the DC Circuit, the Court discusses " . . . a compelled physical invasion of property, and hence a per se taking . . .".

Federal Communications Commission:

1) In the Matter of: Philip Wojcikewicz, CSR-6030-0, DA03-2971 (2003)

2) In the Matter of: Michael and Alexandra Pinter, CSR-6245-0, DA04-2893 (2004)

3) In the Matter of: Philip Wojcikiewicz, CSR-6030-0, FCC-07-98 (2007)

[With regard to satellite dish installation, but construing the difference between easements to maintain and ownership [governed by the controlling document [Declarations], and 'the rights of third parties to enter . . . [f]or such reasons as inspection or maintenance do not defeat the owner's rights . . . "

The 3rd Circuit cites Tuthill Ranch Inc v. United States, 381 F3d 1132 , but it is distinguishable. The infringement in that case was apparently light signals through fiber optic lines, installed within the physical space the easement clearly allowed. BPA, undoubtedly, paid for the replacement of the signal lines. BPA also paid

consideration for the easement. Tuthill would be more analogous if BPA had required Tuthill to pay to replace the signal lines and towers across what was probably his 'south forty', rather than, in my case, the still serviceable roof on my house, which did not need to be replaced.

The logic of the dissent, however, in Tuthill, also citing Toews v. United States, 376 F3d 1371. is the clearest I found:

> In TUTHILL RANCH, INC., v. UNITED STATES, MAYER, Chief Judge, dissenting:
>
> I dissent because the objective evidence shows that Bonneville Power Authority (BPA) installed fiber optic cable with excess fibers which exceeded operational needs, mainly because it wanted to generate revenue by leasing the excess to telecommunications providers. The installation of a thirty-six fiber cable across the Tuthill Ranch (Tuthill) was not "necessary in connection" to maintaining the electrical power transmission lines. Therefore, this installation is outside the scope of the easement and is a taking compensable under the Fifth Amendment because BPA has permanently occupied physical space and deprived Tuthill of the right to exclude others.
>
> Contrary to the court, the proper course is first to construe the easement to determine

whether the challenged activity is within its bounds. See Toews v. United States, 376 F3d 1371. If BPA's activity is within the scope of the easement, the takings analysis ends. If, however, its activities exceed the easement in a manner not contemplated by the parties, and BPA has physically occupied Tuthill's property, a takings claim exists. When evaluating a takings claim the court first "determines whether the plaintiff possesses a valid interest in the property affected by the governmental action, i.e., whether the plaintiff possessed a stick in the bundle of property rights. If so, the court proceeds to the second step, determining whether the governmental action at issue constituted a taking of that stick." Boise Cascade Corp. v. United States, 296 F.3d 1339, 1343 (Fed. Cir. 2002) (internal citations and quotations omitted).

We construe the scope of an easement from the parties' intent, which we ascertain from the relevant instruments and the objective circumstances to which they refer. See Sunnyside Valley Irrigation Dist. v. Dickie, 73 P.3d 369, 372 (Wash. 2003) ("The intent of the original parties to an easement is determined from the deed as a whole. If the plain language is unambiguous, extrinsic evidence will not be considered.") (internal citations omitted).

In Loretto v. Teleprompter Manhattan CATV

Corp., 458 U.S. 419 (1982), this Honorable Court held:

> "a physical intrusion by government [is] a property restriction of an unusually serious character for purposes of the Takings Clause." Id. at 426 (internal quotations omitted). The Court further held that "when the physical intrusion reaches the extreme form of a permanent physical occupation, a [per se] taking has occurred."

The Loretto court emphasized that the per se taking rule is "very narrow" and applies only to regulations that "require the landlord to suffer the physical intrusion of his building by a third party." Id. At 440-41.

> The line which separates [landlord-tenant] cases from Loretto is the unambiguous distinction between a commercial lessee and an interloper with a government license." Id. at 252-53 Consequently, "[w]hile the 'right to exclude' is doubtless ... 'one of the most essential sticks in the bundle of rights that are commonly characterized as property,' ... that right [was not] taken from petitioners on the mere face of the [regulation]." Id. (quoting Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979)).

In this case, those purporting to be the homeowner's association ripped off a serviceable roof.

Roof replacement is not a minor task, and there's quite a bit of waste involved.

My homeowner's association was notified during the roof project that the firewalls were not constructed according to the design documents [yes, I can read a blue-line drawing - from engineering drafting class]. In my home, every cinder block course is missing the end diagonal block. The township was made aware of this via digital pictures, and sent the letter to the HOA. No action was taken with regard to the fire hazard.

Also during the project, another homeowner's house was found to be missing every other roof truss. The rest of us were made to pay for this. That fact clearly resides outside an 'exterior maintenance' covenant, even if one grants the HOA the option to divvy up the extra cost.

I mention this only to illustrate the actions of the purported 'Association' Respondents.

REASONS FOR GRANTING THE PETITION

This would give this Honorable Court the opportunity to resolve what I believe is a split between the recognized and protected property rights of homeowners in planned communities with regard to easements, as the FCC case, Tuthill, and this case seem to differ.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrew J. Bullock IV
November 3, 2009

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Bullock v. Klein, et al, Eastern District of Pennsylvania, 07-0621, EXPLANATION AND ORDER

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APPENDIX: A

Case: 08-4646 Document: 00319748185 Page: 1 Date Filed: 07/31/2009

NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-4646

ANDREW J. BULLOCK, IV,
Appellant

v.

ARTHUR S. KLEIN, Esquire; KENNETH O. SPANG, III, Esquire; SCOTT F. WATERMAN, Esquire; MARIE RITA GLEASON, Esquire, individually, and in her capacity as Township Manager of Tredyffrin Township, Chester County, Commonwealth of Pennsylvania; THOMAS J. CRANDALL, individually and in his capacity as purported Board Member of Main Street Village Homeowners' Association; GERARD J. BERGER, individually and in his capacity as purported Board Member of Main Street Village Homeowners' Association; SHAYNA F. BEST, individually and in her capacity as purported Board Member of Main Street Village Homeowners' Association; WILLIAM M. SUNICK, JR., individually and in his capacity as purported Board Member of

Main Street Village Homeowners' Association; DONNA M. HOUGHTON, individually and in her capacity as purported Board Member of Main Street Village Homeowners' Association; RONALD WHITE, individually and in his capacity as purported Board Member of Main Street Village Homeowners' Association; CHRISTOPHER CONN, individually and in his capacity as relates to Atlantic Roofing; SGT. BARRAR, Tredyffrin Township Police Department, individually, and in his capacity as Police Officer of Tredyffrin Township; OFCR. JOHN DOE (1-6), individually and in their capacity as Police Officers of Tredyffrin Township; CAPT. ANDREW CHAMBERS, individually and in his capacity as Captain of Tredyffrin Township Police Department; HUGH A. O'HARE, individually and in his capacity as Chief Building Code Officer of Tredyffrin Township; THOMAS J. FOGA, JR., individually and in his capacity as Treasurer of Bryn Mawr Landscaping; TREDYFFRIN TOWNSHIP, CHESTER COUNTY, COMMONWEALTH OF PENNSYLVANIA; TREDYFFRIN TOWNSHIP POLICE DEPARTMENT; MAIN STREET VILLAGE HOMEOWNERS' ASSOCIATION; PENCO MANAGEMENT INC; EDMUND S. PENDLETON, individually and in his capacity as President of Penco Management Inc.; BRYN MAWR LANDSCAPING CO INC; ATLANTIC ROOFING CORP; JIM MILLER ROOFING AND SHEET METAL INC;

JAMES MILLER, individually in his capacity as President of Jim Miller Roofing and Sheet Metal Inc; WISLER, PEARLSTEIN, TALONE, CRAIG, GARRITY & POTASH, LLP.; BLACK, STRANICK & WATERMAN, LLP; DAVID J. SCAGGS, Esquire; BLAIR H. GRANGER, Esquire; BLAIR H. GRANGER & ASSOCIATES, P.C.; MS. EMELINE BALDASSARREE, individually and in her capacity as Building Inspector of Tredyffrin Township, Chester County, Commonwealth of Pennsylvania; JUDY L. DIFILLIPO, individually and in her capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; WARREN E. KAMPF, Esquire, individually and in his capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; BILL DEHAVEN, individually and in her capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; PAUL J. DRUCKER, Esquire, individually and in his capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; ROBERT W. LAMINA, individually and in his capacity as Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; VINCENT POMPO, Esquire, and in his capacity as Solicitor for Tredyffrin Township,

Chester Co.,Commonwealth of Pennsylvania; MARK DIFELICIANTONIO, individually and in his capacity as a Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; E. BROOKS KEFFER, JR., Esquire, individually and in his capacity as Member of the Board of Supervisors of Tredyffrin Township, Chester Co., Commonwealth of Pennsylvania; ELIZABETH A. SHINGLE, individually and in her capacity as Managing Agent for Main Street Village Homeowners' Association; MONIKA GERMONO, individually and in her capacity as purported Agent for purported Main Street Village Homeowners' Association; THOMAS P. HOGAN, Esquire; SOVEREIGN BANK; BACI BROTHERS BUILDERS INC.; ARJET BACI; SYRJA BACI; ILIR BACI; JUDITH M. WETZEL, individually and in her capacity as purported Board Member of Main Street Village Homeowners' Association; PATRICIA E. EVANS; KATHRYN MARINICK; DON FRANCESCHINI

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-07-cv-00621)
District Judge: Honorable Anita B. Brody

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 23, 2009

Before: McKEE, HARDIMAN and COWEN, Circuit Judges

(Opinion filed: July 31, 2009)

OPINION

PER CURIAM

Appellant Andrew J. Bullock, IV, appeals from the dismissal of his civil suit pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, we will affirm the district court's judgment.

We assume the parties' familiarity with the facts, as set forth by the District Court in its dismissal order. Essentially, this litigation stems from a disagreement between Bullock and the Main Street Village Homeowners' Association ("the Association") over the Association's replacement of Bullock's roof. Bullock owned and occupied a home in Main Street Village ("Village") which the Association managed. On July 16, 2003, the Association called a meeting of all homeowners to vote on whether to impose a special assessment to finance roof replacements in Main Street Village. Bullock was not allowed to vote, however, because he owed more than $1,000 in dues to the Association. On September 2, 2003, the Association sent a letter to all homeowners in Main Street Village stating that they had

"overwhelmingly approved" a special assessment financing and authorizing the roof replacement project.

The Association requested that Tredyffrin Township ("Township") issue permits for the roof replacements for all properties in the Village. Bullock, orally and in writing, requested that the Township not issue a building permit for his house. Despite Bullock's request, the Township issued the permit and Bullock's roof was replaced.

In February 2007, Bullock filed a lengthy complaint in the district court against numerous defendants asserting claims under federal and state law. In his third amended complaint, Bullock averred that certain Association and Township officials violated his "5th Amendment property rights" by replacing his roof without his permission.(1) The district court, acting on several of the defendants' motions pursuant to Fed. R. Civ. P. 12(b)(6) and, in part, acting sua sponte, dismissed all claims and defendants: 1) for failing to state a claim; 2) for lack of standing; and 3) because several of the claims were criminal claims improperly filed as civil claims. Bullock filed a timely notice of appeal challenging the district court's dismissal.

1) The Fifth Amendment provides in relevant part that "private property [shall not] be taken for public use, without just compensation."

We have jurisdiction over final orders of district courts under 28 U.S.C. § 1291. Our review of the district court's dismissal of a complaint pursuant to Rule 12(b)(6) is plenary. McGovern v. City of Phila., 554 F.3d 114, 115 (3d Cir. 2009). In determining whether a district court properly dismissed a complaint under Rule 12(b)(6), we are required to "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008) (citation omitted). However, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009) (citation omitted).

On appeal, Bullock claims that the district court ignored his Fourteenth Amendment due process claims against Township and Association defendants who were involved with the issuance of the building permits for his roof replacement. Bullock also asserts that he pleaded sufficient facts to state a § 1983 claim that the Township and the Association

violated his Fifth Amendment property rights. Finally, Bullock challenges the district court's finding

that his claims pursuant to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO") are time barred.

Bullock's claims are without merit. To hold a municipality liable under § 1983, Bullock had to show that the Township's official policy or custom caused the deprivation of a federal right. Monell v. Dep't of Soc. Servs. of New York, 436 U.S. 658, 694 (1978). As the district court held, to establish a Fifth Amendment violation, Bullock was required to show that a "taking" occurred. In order to state a "taking claim," Bullock had to allege facts showing that Township infringed on one of his protected property rights. See Rogers v. Bucks County Domestic Relations Section, 959 F.2d 1268, 1275 (3d Cir. 1992). Here, the Village's "Declaration of Covenants and Easements" explicitly allows the Association to replace Bullock's roof. (Supplemental Appendix 83.) Therefore, because Bullock covenanted away his property right to replace the roof on his home to the Association, his Fifth Amendment claim must fail. See, e.g., Tuthill Ranch, Inc. v. United States, 381 F.3d 1132, 1139 (Fed. Cir. 2004) (No Fifth Amendment taking claim where optical fiber signal lines are installed within the terms of the original easement).

Further, because the Township's issuance of the building permit did not infringe on Bullock's protected property interest, his procedural due

process arguments relating to the building permit also do not state a claim upon which relief may be granted. See Burns v. Pa. Dep't of Corr., 544 F.3d 279, 285 (3d Cir. 2008) ("To prevail on a procedural due process claim, a litigant must show 1) that the state deprived him of a protected interest in life, liberty, or property . . . "). Even if Bullock had a protected interest, the record shows that he was provided with both adequate notice and a reasonable opportunity to be heard. See Deibler v. City of Rehoboth Beach, 790 F.2d 328, 331 (3d Cir. 1986).

Finally, the district court held that Bullock's claims under RICO were time barred. Bullock alleged that certain defendants formed a "RICO Enterprise" on August 8, 2002, around the same time he sent a letter to the Association. Bullock did not file his lawsuit until February 15, 2007. The Supreme Court has held that a four-year statute of limitations applies to all civil actions under the RICO statute. Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 156 (1987). A RICO claim accrues, however, not at the time of injury but at the time when the plaintiff discovers the injury. See Forbes Eagleson, 228 F.3d 471, 484 (3d Cir. 2000) (RICO claims begin to accrue when a plaintiff discovers the injury). It is unclear, from the pleadings, when Bullock became aware of the alleged RICO Enterprise. Even if this claim was timely filed, however, the district court properly dismissed the

claim as it was not properly pleaded. Because Bullock alleged a RICO cause of action predicated on mail and wire fraud, he was required to plead the circumstances of his claim with particularity. See Fed. R. Civ. P. 9(b); Lum v. Bank of America, 361 F.3d 217, 223-24 (3d Cir. 2004). Bullock's conclusory mail and wire fraud assertions fall short of this higher standard of pleading. Therefore, we agree with the district court, albeit for a different reason, that Bullock failed to state a RICO claim upon which relief could have been granted. (2)

For the foregoing reasons, we will affirm the judgment of the district court. Appellee Tredyffrin Defendant's motions to expand the record and to file a supplemental appendix are granted. Appellant's motions to file an amended reply brief and to expand the record are also granted.

2) Bullock requests that we remand to the district court so that he may be given an opportunity to amend his complaint. (Appellant's Reply Br. at 8.) We note that the district court allowed Bullock to amend his complaint three times before granting appellees' motion to dismiss. It is apparent that allowing Bullock leave to amend his complaint further would have been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 112-13 (3d Cir. 2002) (dismissals of frivolous claims do not require leave to amend due to the long tradition of denying leave to amend under Fed. R. Civ. P. 15(a) when amendment is inequitable or futile).

APPENDIX: B

Case 2:07-cv-00621-AB Document 82 Filed 10/23/2008 Page 1 of 17

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANDREW J. BULLOCK,
Plaintiff.

v.

ARTHUR S. KLEIN, et al.,
Defendants.

CIVIL ACTION
NO. 07-0621
EXPLANATION AND ORDER

October _21__, 2008 Anita B. Brody, J.

I. INTRODUCTION

On March 24, 2008, Plaintiff Andrew J. Bullock ("Bullock") filed a Third Amended Complaint (Doc. #56) against fifty-six (56) defendants.(1) Seven motions to dismiss followed. On March 26, 2008, sixteen (16) defendants called "Association Defendants"(2) filed a Motion to Dismiss or Strike the Third Amended Complaint (Doc. #58). On April 2, 2008, Defendants Scott F. Waterman and Black, Stranick & Waterman, LLP, filed a Motion to Dismiss the Third Amended Complaint (Doc. #60). On April 4,

2008, Defendants Christopher Conn and Atlantic Roofing Corp. filed a Motion to Dismiss the Third Amended Complaint (Doc. #61).

On April 14, 2008, twenty-two (22) defendants called "Tredyffrin Defendants"(3) filed a Motion to Dismiss the Third Amended Complaint (Doc. #64). On May 9, 2008, Defendants Blair H. Granger, David J. Scaggs, and Blair H. Granger & Associates, P.C., filed a Motion to Dismiss the Third Amended Complaint (Doc. #67).

1) The defendants are Arthur S. Klein; Kenneth O. Spang, III; Scott F. Waterman; Marie R. Gleason; Thomas J. Crandall; Gerard J. Berger; Shayna F. Best; William M. Sunick, Jr.; Judith B. Wetzel; Donna M. Houghton; Ronald A. White; Christopher Conn; Elizabeth A. Shingle; Sergeant Barrar; Officer John Doe #1; Officer John Doe #2; Officer John Doe #3; Officer John Doe(1, cont.) #4; Officer John Doe #5; Officer John Doe #6; Captain Andrew Chambers; Hugh A. O'Hare; Thomas J. Foga, Jr.; Tredyffrin Township; Tredyffrin Township Police Department; Main Street Village Homeowners' Association; PENCO Management, Inc.; Edmund S. Pendleton; Donald Franceschini; Monika Germono; Bryn Mawr Landscaping Co., Inc.; Atlantic Roofing Corp.; Jim Miller Roofing and Sheet Metal, Inc.; James Miller; Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP; Black, Stranick & Waterman, LLP; David J. Scaggs; Blair H. Granger; Blair H. Granger & Associates, P.C.; Emeline Baldassarre; Judy L. Difillipo; Warren E. Kampf; Bill DeHaven; Paul J. Drucker; Robert W. Lamina; Vincent Pompo; Mark Difeliciantonio; E. Brooks Keffer, Jr.; Thomas P. Hogan; Sovereign Bank; Baci Brothers Builders, Inc.; Arjet Baci; Syrja Baci; Ilir Baci; Patricia E. Evans; Kathryn Marinick.

2) Association Defendants are Main Street Village Homeowners Assocation, PENCO Management, Inc., Monika Germono, Ronald A. White, Elizabeth A. Shingle, Arthur S. Klein, Thomas J. Crandall, Gerard J. Berger, Shayna F. Best, William M. Sunick, Judith M. Wetzel, Donna M. Houghton, Patricia E. Evans, Kathryn Marinick, Edmund S. Pendleton, and Donald Franceschini.

3) Tredyffrin Defendants are Tredyffrin Township, Tredyffrin Township Police Department, Judy L. Difillipo, Warren E. Kampf, Bill DeHaven, Robert W. Lamina, E. Brooks Keffer, Jr., Paul J. Drucker, Mark Difeliciantonio, Marie R. Gleason, Hugh A. O'Hare, Emeline Baldassarree, Vincent Pompo, Thomas P. Hogan, Captain Andrew Chambers, Sergeant Barrar, Officer John Doe #1, Officer John Doe #2, Officer John Doe #3, Officer John Doe #4, Officer John Doe #5, and Officer John Doe #6.

4) The eight defendants who have not filed motions to dismiss are Thomas J. Foga, Jr., Bryn Mawr Landscaping Co., Inc., Jim Miller Roofing and Sheet Metal, Inc., James Miller, Baci Brothers Builders, Inc., Arjet Baci, Syrja Baci, and Ilir Baci.

On June 9, 2008, Defendants Kenneth O. Spang, III, and Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP, filed a Motion to Dismiss the Third Amended Complaint (Doc. #70). Finally, on June 30, 2008, Defendant Sovereign Bank filed a Motion to Dismiss the Third Amended Complaint (Doc. #72). This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331. For the reasons stated below, I will grant the seven motions to dismiss (Doc. ##58, 60, 61, 64, 67, 70, and 72). Also, on my own motion, I will dismiss Bullock's claims against all other defendants.(4)

II. FACTUAL BACKGROUND(5)

From August 28, 1997, until recently, Bullock owned and occupied 22 Sturbridge Lane in Wayne, Pennsylvania. The house was located in the Main Street Village neighborhood in Chesterbrook, Tredyffrin Township. Defendant Main Street Village Homeowners' Association ("Association") managed Main Street Village. A document titled "Declaration of Covenants and Easements" governed the relationship between homeowners and the Association.

5) In reviewing a motion to dismiss pursuant to F.R.C.P. 12(b)(6), "all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party." Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). Therefore, the facts are stated in the light most favorable to the non-moving party.

At some point before October, 1999, Bullock complained to the Association that the retaining wall in his yard was defective and allowed water to enter his basement. In response, the Association contracted to have the wall rebuilt, albeit without obtaining a permit or using a licensed contractor, and the contractor incorrectly installed a pipe behind the wall. On October 17, 1999, Bullock's basement flooded during a thunderstorm, causing damage to his personal property in an amount over $3,298.89. Elizabeth Shingle ("Shingle"), managing agent for the Association, denied that the Association was responsible for the property damage. About two weeks later, Bullock's basement flooded again during another thunderstorm.

After the second flood, an engineer came to assess the retaining wall. Shingle told Bullock that the engineer believed that nothing could be done. In response, Bullock stopped paying his monthly assessments to the Association. The Association then sued Bullock for the unpaid assessments ("Association Lawsuit"). After Bullock attended a board meeting of the Association to discuss matters, Shingle sent Bullock a letter from the Association dated January 31, 2001, stating that the Association would have the retaining wall fixed but would not pay for damage to Bullock's personal property.

On February 22, 2001, Bullock hired Defendant David J. Scaggs ("Scaggs") to defend him

in the Association Lawsuit. Scaggs encouraged Bullock to settle for $1,500 and prepared a settlement agreement. Bullock reviewed and signed the agreement but directed Scaggs not to fax it to the Association until Bullock had heard from the Association and notified Scaggs. Without Bullock's permission, Scaggs faxed the agreement. On May 8, 2001, Scaggs sent a letter to the Hon. Jeremy M. Blackburn stating incorrectly that the "matter has settled." (Compl. ¶ 22.) Finally, Scaggs sent Bullock a bill for the representation.

In January, 2002, Bullock submitted a "Candidate Data Sheet" for election to the Association's board of directors ("Board") at the 2002 annual meeting. On February 4, 2002, Shingle sent Bullock a letter from the Association declining his candidacy. Bullock objected to the subsequent election on the ground that, according to the Association's bylaws and other law, his candidacy should not have been declined. The Association's bylaw titled "RULES OF ORDER" cites Robert's Rules of Order. At the meeting, Defendant Arthur S. Klein ("Klein") stated "[w]e don't go by Robert's Rules," an authority Bullock had cited, because "[t]hat's not a legal document." (Compl. ¶ 32.) On August 8, 2002, Bullock sent a letter to the Association declaring that Shingle's letter and Klein's statement constituted "a clear and unambiguous repudiation of your obligation under

the Declaration of Covenants and Easements" and that Bullock would "treat this as a breach of contract."(6) (Compl. ¶ 33.)

In the Association Lawsuit, the Court of Common Pleas of Chester County entered a default judgment against Bullock, who appealed. By consequence, on October 22, 2002, the Association sold some of Bullock's personal property through a sheriff's sale. On November 6, 2002, Defendant Kenneth O. Spang, III, ("Spang") sent Bullock a letter stating that Bullock still owed the Association $10,266.11, an amount that included his monthly assessments for December, 2002, and January, 2003. The letter was printed on letterhead of Defendant Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP ("Wisler-Pearlstine").

On January 2, 2003, Bullock sent the Association a letter requesting "a complete accounting of the amount (approximately ten thousand dollars) requested in your previous settlement offer." (Compl. ¶ 36.) Bullock also requested that the Association "make available by January 10, 2003, the complete records of Main Street Village Homeowners' Association, for my review and copying at Penco [sic] Management's

6) On January 14, 2003, Bullock submitted another Candidate Data Sheet for the 2003 annual meeting. The following day, the Association sent Bullock a letter declining his candidacy. On January 26, 2007, Bullock submitted a Candidate Data Sheet for the 2007 annual meeting.

office in Chadds Ford." (Id.) Spang responded with a letter stating that Bullock's request was "overly broad and burdensome" and that, having failed to pay assessments, he was not entitled to review any records. (Compl. ¶ 39.)

On January 6, 2003, Defendant PENCO Management ("PENCO") sent Bullock a letter indicating that he was "prohibited from returning to any of PENCO's offices."(7) (Compl. ¶ 36.)

On July 16, 2003, the Association called a meeting of all homeowners to vote on whether to impose a special assessment to finance roof replacements in Main Street Village. Pursuant to a motion by Defendant Thomas Crandall ("Crandall"), the Board had decided that homeowners who owed more than $1,000 to the Association would not be

7) On this matter, Bullock had a conversation with Defendant Ronald White ("White") on March 10 or 11, 2004. On March 12, 2004, White sent a letter to Bullock stating that "there are records that you as a homeowner are not privy to ... [so] specify in detail what records you are referring to and I will discuss your responds (sic) with the Board." (Compl. ¶ 72) On March 19, 2004, Bullock left this message for White: "everything else." (Compl. ¶ 73) On June 30 and July 23, 2006, Bullock asked Defendant William M. Sunick ("Sunick") for all of the approved minutes of meetings of the Board from February, 2005, to late June, 2006. Sunick responded: "That would be unethical." (Compl. ¶ 74)

allowed to vote.(8) Accordingly, Bullock was not allowed to vote at the meeting. On September 2, 2003, the Association sent a letter to all homeowners in Main Street Village stating that they had "overwhelmingly approved" a special assesment financing and authorizing the roof replacement project. (Compl. ¶ 50.)

On October 20, 2003, Klein faxed a letter to Defendant Tredyffrin Township ("Township") requesting that permits be issued on all properties in Main Street Village. On November 7, 2003, Bullock delivered a letter to Township directing it not to issue a permit for his house. On December 17, 2003, Klein sent another letter to Township indicating that the homeowners had authorized Klein to sign the permits. On May 24, 2004, Klein faxed a letter to Township "specifically requesting that a permit be issued pursuant to the authority give [sic] me by the homeowners for 22 through 26 Sturbridge Lane." (Compl. ¶ 56.) Bullock then orally reminded Township not to issue a building permit for his house.

On May 20, 2004, Defendant Marie R. Gleason ("Gleason") directed Defendant Emeline Baldassarre ("Baldassarre") to issue the permits. Gleason also left a phone message with Bullock stating that she

8) Klein, Crandall, Gerard Berger ("Berger"), Donna Houghton ("Houghton"), and Shayna Best ("Best") were present when the Board made this decision.

"wasn't interested" in his information and that Klein's documents "appear to me to be very standard." (Compl. ¶ 58.) Defendant Christopher Conn ("Conn") of Defendant Atlantic Roofing Co. certified the permit application, affirming: "I hereby certify that ... the proposed work is authorized by the owner of record." (Compl. ¶ 85.) Bullock alleges that Township had and "continues the same policy of requiring homeowners' association approval before permits can be issued ... [with] no procedure to see if any HOA actually owns any particular property rather than the equitable owner." (Compl. ¶ 66.)

When roofers came to Bullock's house, Defendant Seargant Barrar ("Barrar") and Defendant Officer John Doe #1 ("Doe #1") arrived in uniform and armed. They declined Bullock's request for them to remove the roofers, and looked on while Bullock argued with Klein and the roofers. Ultimately, Bullock's roof was replaced.

Some time later, Defendant Sovereign Bank initiated foreclosure proceedings on Bullock's house at 22 Sturbridge Lane. On February 14, 2007, Bullock brought the instant action. The following day, February 15, 2007, Defendant Baci Brothers Builders, Inc., purchased Bullock's house at a sherrif's sale.

Bullock makes two allegations relating to his neighbor. First, in October, 2006, the Association announced a sherrif's sale at 23 Sturbridge Lane,

whose owner was foreign-born and owed less than Bullock's alleged debt. Second, the Association at some point made the owner of 23 Sturbridge Lane remove a satellite dish "which appeared to conform to the < 1 meter standard" set forth in the Telecommunications Act of 1996. (Compl. ¶ 137.)

III. DISCUSSION

Bullock's Third Amended Complaint ("Complaint") asserts various claims arising under federal and state law against an uncertain number of defendants. The Complaint leaves ambiguous, however, which claims Bullock asserts against which defendants. Therefore, I will proceed as follows. Based on Section A, I will dismiss all claims against thirty (30) named defendants about whom Bullock makes no factual allegations. Based on Sections B through D, I will dismiss all federal claims mentioned anywhere in the Complaint. After carefully studying his Complaint, I have found only nine federal claims asserted by Bullock. Based on Section B, I will dismiss four under Fed. R. Civ. Pro. 12(b)(6); based on Section C, I will dismiss two others because Bullock lacks standing; and based on Section D, I will dismiss the remaining three because they are criminal in nature. Finally, based on Section E, I will exercise my discretion under 28 U.S.C. § 1367(c)(3) to dismiss all remaining state law claims. Thus, all claims and defendants will be dismissed.

A. Defective Pleading

The Complaint's caption names thirty (30) defendants about which Bullock makes no factual allegations. The Complaint does not mention twenty-four (24) of these defendants again(9) and mentions the other six only in passing.(10) In this manner, the Complaint violates Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. Pro. 8(a)(2). Accordingly, I will dismiss Bullock's claims against those thirty (30) defendants. These defendants include eight who have not filed motions to dismiss. (11)

9) The defendants named in the Complaint's caption but never again mentioned are Judith B. Wetzel; Officer John Doe #3; Officer John Doe #4; Officer John Doe #5; Officer John Doe #6; Captain Andrew Chambers; Hugh A. O'Hare; Thomas J. Foga, Jr.; Edmund S. Pendleton; Bryn Mawr Landscaping Co., Inc.; Jim Miller Roofing and Sheet Metal, Inc.; James Miller; Judy L. Difillipo; Warren E. Kampf; Bill DeHaven; Paul J. Drucker; Robert W. Lamina; Mark Difeliciantonio; E. Brooks Keffer, Jr.; Arjet Baci; Syrja Baci; Ilir Baci; Patricia E. Evans; and Kathryn Marinick.

10) The defendants named in the Complaint's caption but later mentioned only in passing are Atlantic Roofing Corp. (see Compl. ¶¶ 59, 85); Black, Stranick & Waterman, LLP (see Compl. ¶ 98); Blair H. Granger (see Compl. ¶ 207); Blair H. Granger & Associates, P.C., id.; Vincent Pompo (see Compl. ¶ 69); and Thomas P. Hogan (see Compl. ¶ 87).

11 See supra note 4.

Thus, I will dismiss Bullock's claims against these eight defendants on my own motion. See Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3d Cir. 1980) ("The district court may on its own initiative enter an order dismissing the action provided that the complaint affords a sufficient basis for the court's action."); Bowers v. Nat'l Collegiate Athletic Ass'n, 9 F. Supp. 2d 460, 497-98 (D.N.J. 1998) ("The Court may, sua sponte, dismiss a claim as to non-moving defendants where the inadequacy of the claim is clear.").

B. Failure to State a Claim

Defendants(12) move to dismiss Bullock's Third Amended Complaint for "failure to state a claim upon which relief can be granted" pursuant to Fed. R. Civ. Pro. 12(b)(6). According to Rule 12(b)(6), a complaint must "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964 (2007). The allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Id. At 1965. "This 'does not impose a probability requirement at the pleading stage,' but instead 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element.'"

12) This refers to all who filed motions to dismiss.

Phillips v. County of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008) (quoting Bell Atl. Corp., 127 S.Ct. At 1965).

1. The Fair Debt Collection Practices Act

Bullock asserts claims against Spang and Wisler-Pearlstine under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-92p (2008) ("FDCPA"). Bullock alleges that Spang's letter to Bullock dated November 2, 2002, and printed on Wisler-Pearlstine letterhead contains statements violating the FDCPA. (Compl. ¶ 35.)

The FDCPA provides that "[a]n action to enforce any liability created by this [act] ... may be brought ... within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). Where a plaintiff brings an FDCPA action based on the mailing of a letter, the statute of limitations period begins running around when the defendant mailed the letter. See Mattson v. U.S. West Communications, Inc., 967 F.2d 259, 261 (8th Cir. 1992) (holding that the period begins running on the day that the defendant mailed the letter); Maloy v. Phillips, 64 F.3d 607, 608 (11th Cir. 1995) (holding that the period begins running on the day after the date that the defendant mailed the letter); Johnson v. Riddle, 305 F.3d 1107, 1115 (10th Cir. 2002) (same).

Bullock initiated this action on February 14, 2007, over four years after November 2, 2002, when Spang mailed the letter allegedly violating the

FDCPA. Thus, § 1692k(d) precludes Bullock's claims against Spang and Wisler-Pearlstine. Therefore, I will grant Spang and Wisler-Pearlstine's motion to dismiss Bullock's claims under the FDCPA.

2. Section 1983: Takings Clause

Bullock asserts claims against Tredyffrin, Gleason, Baldassarree, Police Department, Barrar, and Doe #1 under 42 U.S.C. § 1983. To establish a prima facie case under § 1983, a plaintiff must show that:

1. Someone deprived him of a federal statutory or constitutional right; and

2. The person who deprived him of that right acted under color of state or territorial law.

Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995) (citing Gomez v. Toledo, 446 U.S. 635, 640 (1980)). To hold a municipality liable under § 1983, moreover, the plaintiff must also show that the municipality's official policy or custom caused the deprivation of his federal right. Monell v. Dep't of Soc. Serv., 436 U.S. 658, 694 (1978).

Bullock claims that Tredyffrin, Gleason, Baldassarree, Police Department, Barrar, and Doe #1 violated his "right of property" under the Takings Clause of the Fifth Amendment. (Compl. ¶¶ 65, 102-105, 203.) The clause provides: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. To establish a Takings Clause violation, a plaintiff must show,

among other things, that a "taking" occurred. "Not every physical invasion is a taking." Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 436 n.12 (1982) (emphasis omitted). Temporary invasions "are subject to a ... balancing process to determine whether they are a taking." Id. "[S]everal factors are particularly significant—the economic impact of the regulation, the extent to which it interferes with investment-backed expectations, and the character of the governmental action." Id. at 432 (citing Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978)).

Bullock alleges that the abovementioned defendants violated the Takings Clause by allowing roofers to come onto Bullock's property to replace his roof.(13) Considering the three factors mentioned in Loretto regarding temporary invasions, however, allowing roofers temporarily to come onto Bullock's property does not constitute a "taking" under the Fifth Amendment. See Jones v. Phila. Police Dep't, 57 Fed. Appx. 939 (3d Cir. 2003) (holding that police officers entering an office building, conducting a two-hour search, and causing property damage does not constitute a taking); Hendler v. U.S., 952 F.2d 1364, 1371 (Fed. Cir. 1991) (noting that "the government's activity [may be] so short lived as to be more like the tort of trespass than a taking of property.").

13) Bullock does not assert any claim related to the roof replacement itself.

Therefore, I will grant the motion to dismiss Bullock's claims under § 1983 against Tredyffrin, Gleason, Baldassarree, Police Department, Barrar, and Doe #1.

Section 1983: Equal Protection Clause

Bullock also asserts § 1983 claims against the Association, Klein, Crandall, Berger, Houghton, and Best. He alleges that they violated the Equal Protection Clause of the Fourteenth Amendment by prohibiting homeowners owing more than $1,000 to the Association from voting at the July 16, 2003, meeting of Main Street Village homeowners. (Compl. ¶ 47.) Bullock has alleged no facts whatsoever indicating that the Association, Klein, Crandall, Berger, Houghton, or Best acted "under color of state or territorial law." Groman, 47 F.3d at 633. Therefore, I will grant the motion to dismiss Bullock's claims under § 1983 against the Association, Klein, Crandall, Berger, Houghton, and Best.

4. The Racketeer Influenced and Corrupt Organizations Act

Bullock asserts claims against all remaining defendants under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (2008) ("RICO"). The RICO statute prohibits joining an enterprise that affects interstate commerce and participating in that enterprise "through a pattern of racketeering activity or collection of unlawful debt."

18 U.S.C. § 1962(c). The statute contains a civil enforcement provision that states: "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court." 18 U.S.C. § 1964(c). The Supreme Court has held that a four-year statute of limitations applies to all civil actions under the RICO statute. Agency Holding Corp. v. Malley-Duff & Assoc., Inc., 483 U.S. 143, 156 (1987).

Bullock alleges that all remaining defendants formed a "RICO Enterprise" that violated Bullock's state and federal rights.(14) He maintains that this enterprise formed on or around August 8, 2002. (Compl. ¶ 33.) Bullock initiated this action over four years later on February 14, 2007. Thus, the statute of limitations bars Bullock's claims. Therefore, I will grant the motions to dismiss Bullock's claims under the RICO statute against all remaining defendants.

C. Standing

Under U.S. Const. art. III, § 2, a plaintiff without standing cannot litigate a claim in federal

14) Bullock maintains, essentially, that a "RICO Enterprise" including all remaining defendants unlawfully failed to compensate him for personal property damage, imposed assessments, sued him for failure to pay, denied him access to the Association's records, denied him voting rights, had his roof replaced, and declined his candidacy for the Board.

court. Raines v. Byrd, 521 U.S. 811, 818 (1997). To have standing, "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Id. At 818-19.

1. Fair Housing Act

Bullock asserts a claim against the Association under the Fair Housing Act, 42 U.S.C. §§ 3601-3631 (2008) ("FHA"), alleging that it violated the FHA by discriminating against the owner of 23 Sturbridge Lane. (Compl. ¶ 108.) Bullock lacks standing to bring this claim because he does not allege any personal injury arising from the Association's alleged discrimination. Therefore, I grant the motion to dismiss Bullock's claim under the FHA.

2. Telecommunications Act

Bullock asserts a claim against the Association under the Telecommunications Act of 1996, 47 U.S.C. §§ 153 and 255 (2008) ("TA"), alleging that it unlawfully "caused the owner of 23 Sturbridge Lane to take down a satellite dish which appeared to conform to the < 1 meter standard." (Compl. ¶ 137.) Bullock also lacks standing to bring this claim because he does not allege any personal injury arising from the satellite dish's removal. Therefore, I will grant the motion to dismiss Bullock's claim under the TA.

D. Criminal Claims

Bullock alleges three violations of criminal law

by one or more defendants. Specifically, he alleges criminal violations of:

! The Mail Fraud Act, 18 U.S.C. § 1341 (2008);

! The Wire Fraud Act, 18 U.S.C. § 1343 (2008); and

! The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (2008).

Bullock lacks authority to enforce criminal statutes and cannot obtain relief under them. Therefore, these claims must be dismissed.

Alternatively, Bullock requests that I direct the Office of the United States Attorney for this district to review Bullock's allegations and consider criminal prosecution. This Court cannot compel the United States Attorney to consider or initiate criminal prosecution. See Lichtman v. U.S., No. 07-2902, 2008 WL 3274113 at *2 (3d Cir. Aug. 11, 2008) ("[T]he DOJ's decision to prosecute or not prosecute an individual is within its discretion; thus, the DOJ cannot be compelled under 28 U.S.C. § 1361 to prosecute the alleged offenders."); Inmates of Attica Corr. Fac'y v. Rockefeller, 477 F.2d 375, 379 (2d Cir. 1973) ("federal courts have traditionally, and, to our knowledge, uniformly refrained from overturning, at the instance of a private person, discretionary decisions of federal prosecuting authorities not to prosecute persons regarding whom a complaint of criminal conduct is made."). Therefore, I deny Bullock's request.

E. State Law Claims

Given that all of Bullock's claims arising under federal law will be dismissed, I will exercise my discretion under 28 U.S.C. § 1367(c)(3) to dismiss all state law claims over which I exercised supplemental jurisdiction. Therefore, all remaining claims will be dismissed.

IV. CONCLUSION

Bullock asserts only nine federal claims. Four will be dismissed under Rule 12(b)(6), two will be dismissed because Bullock lacks standing, and three will be dismissed because they are criminal in nature. With all federal claims thus dismissed, I will exercise my discretion under 28 U.S.C. § 1367(c)(3) to dismiss all remaining state law claims. Separately, I will dismiss all claims against thirty (30) named defendants about whom Bullock makes no factual allegations.

Therefore, all claims and defendants will be dismissed.

ORDER

AND NOW, this _21st__ day of October, 2008, it is ORDERED that:

! Association Defendants' Motion to Dismiss or Strike the Third Amended Complaint (Doc. #58) is GRANTED;

! Motion of Defendants Scott F. Waterman and Black, Stranick & Waterman, LLP, to Dismiss the Third Amended Complaint (Doc. #60) is GRANTED;

! Motion of Defendants Christopher Conn and Atlantic Roofing Corp. to Dismiss the Third Amended Complaint (Doc. #61) is GRANTED;

! Tredyffrin Defendants' Motion to Dismiss the Third Amended Complaint (Doc. #64) is GRANTED;

! Motion of Defendants Blair H. Granger, David J. Scaggs, and Blair H. Granger & Associates, P.C., to Dismiss the Third Amended Complaint (Doc. #67) is GRANTED;

! Motion of Defendants Kenneth O. Spang, III, and Wisler, Pearlstine, Talone, Craig, Garrity & Potash, LLP, to Dismiss the Third Amended Complaint (Doc. #70) is GRANTED;

! Defendant Sovereign Bank's Motion to Dismiss the Third Amended Complaint (Doc. #72) is GRANTED; and

! Plaintiff Andrew J. Bullock's Third Amended Complaint is DISMISSED as against Defendants Thomas J. Foga, Jr., Bryn Mawr Landscaping Co.,

Inc., Jim Miller Roofing and Sheet Metal, Inc., James Miller, Baci Brothers Builders, Inc., Arjet Baci, Syrja Baci, and Ilir Baci.

Because all claims have been dismissed as to all defendants, the instant case should be marked as CLOSED.

s/Anita B. Brody ANITA B. BRODY, J.